

## State Bar Of New Mexico

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Postmaster: Please send form 3579 to the State Bar of New Mexico, 1117 Stanford, N. E., Albuquerque, New Mexico 87131.

### When Hearsay Is Admissible

Floyd W. Lopez is pleased to announce the opening of his office on July 1, 1985, for the general practice of law at 123 Yale Blvd., S.E., Albuquerque, New Mexico 87106; Phone: (505) 242-2333. ☐

E. Justin Pennington is pleased to announce the relocation of his law office as of August 1, 1985, to 713 8th Street, N.W., Albuquerque, New Mexico 87102; Phone: (505) 843-9644. ☐

## Notice

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direct supervision with cases. Anyone interested in volunteering to undertake this type of responsibility should call the Disciplinary Board office at 842-5781 in Albuquerque. ☐

## ALA Survey

The Association of Legal Administrators (ALA) will be conducting its Annual Benefit/Compensation Survey for Albuquerque, Santa Fe, and surrounding areas. The results will be tallied by an independent New Mexico accounting firm. The survey results will be available for late September distribution. The data contains salary, fringe benefits, paid holidays, work hours, and other information for the past 12 months. The cost of the survey results will be as follows:

Participants qualifying for membership in N.M. Chapter ALA for remainder of '85

\$35.00

Participants not desiring membership

\$40.00

Non-participants

\$50.00

For further information, please contact Kathy M. Taylor, 247-0100. ☐

## Disciplinary Note

Two unassociated lawyers were retained to represent a criminal defendant on charges of first-degree murder. The agreed-upon

fee for the services of both was a flat fee of \$25,000 for representation through trial, and a \$5000 retainer was paid. As occasionally occurs in criminal cases where persons charged with crimes tend to be somewhat confused and unsettled by the circumstances in which they find themselves, the client subsequently decided that he wanted to retain other counsel so discharged his two attorneys and requested a refund of the unearned portion of the fee.

Both attorneys calculated the hours that they had spent travelling to and from the out-of-town jail where their client was being held, conferring with him and with family members in preparation for a bond hearing, investigating the allegations against their client, and attending the arraignment on his behalf. At their usual hourly rates, the attorneys had expended sufficient time to justify charging the \$5000 fee. The client, however, claimed that he was not made aware of the fact that the attorneys were not in partnership or that he would be paying separately for their time. The attorneys disputed this allegation and offered some proof in support of their position, although there was no written fee agreement to show this conclusively.

Disciplinary Rule 2-102(A) permits the division of a fee for legal services between lawyers who are not partners or associates only under certain circumstances. The client must consent to such a division

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## Disciplinary Note

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after a full disclosure has been made to him of the attorneys' independent status, the division must be made in proportion to the services performed by each, and the total fee charged may not exceed reasonable compensation for the services rendered to the client.

A hearing officer with experience in handling criminal cases was asked to review the file. He concluded that the circumstances presented by alleged facts of the crime coupled with the geographical distance involved and the need for the attorneys to spend an entire weekend attending to the case justified the total amount of time spent on the case by the attorneys. He was concerned that no written fee agreement had been entered into but felt that this could have been due to the urgency of the situation. The reviewing officer felt that the attorneys should be cautioned to immediately memorialize any future fee agreements of this type in writing to avoid problems of this sort and suggested that the attorneys might offer to arbitrate the question of the reasonableness of their total fee. The attorneys agreed to put the matter of their fee before a panel of the Fee Arbitration Committee and were cautioned to in the future make clear to clients by way of a written fee agreement the fact that they were not in association and would be charging separately for their time in the event that the contract

Section A

of employment was terminated. □

## 1985 Annual Convention

The State Bar of New Mexico Annual Convention will be held at the Albuquerque Convention

Center September 12-14. As these dates coincide with the New Mexico State Fair, attorneys are advised to make early reservations at one of the following hotels which are holding rooms for State Bar members. When calling for a reservation, be sure to mention that you will be attending the State Bar Convention.

### *The Regent Hotel*

247-3600

\$55 for a single or double  
\$65 for a triple or a quad

### *The Albuquerque Hilton*

800-821-1901

(The following rates depend on location of rooms.)

\$59 for a single  
\$69 for a double

\$67 for a single  
\$77 for a double

\$75 for a single  
\$85 for a double

### *La Posada de Albuquerque*

242-9090

#### Standard Rooms

\$42 for a single  
\$50 for a double

#### Deluxe Rooms

\$55 for a single  
\$63 for a double

## New ABA Publication

A practical guide for attorneys dealing with cases involving learning disabled children is now available from the American Bar Association's Learning Disabilities Project.

The book, entitled Representing Learning Disabled Children, is a manual designed to aid the lawyer representing learning disabled children in cases in the juvenile justice system, as well as in actions under the federal Education for All Handicapped Children Act of 1975. That act requires that all learning disabled children receive an appropriate education.

The Learning Disabilities Project, funded by a grant from the Foundation for Children with Learning Disabilities, seeks to acquaint attorneys with the issue of learning disabilities, to stimulate interest in the bar in representing these children, and to provide training to lawyers which will enable them to provide adequate representation.

Matthew Bogin, the director of the project and co-author of the manual, is a recognized authority on representing the learning disabled and has had wide experience throughout the country in these cases.

For more information, please contact Matthew B. Bogin,

Director, ABA Learning Disabilities Project, 1800 M Street, N.W., S-200, Washington, D.C. 20036, (202) 331-2250. □